

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 455B.103A and 455B.105(3), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

These proposed amendments to Chapter 64 reissue General Permits Nos. 1, 2 and 3, which authorize the discharge of storm water. General Permits Nos. 1, 2 and 3 were issued in 2007 for a five-year duration and expire October 1, 2012. This action will renew all three permits, extending their coverage another five years to October 1, 2017. General permits for storm water discharges are required to be adopted as rules and are effective for no more than five years as specified in the Iowa Administrative Code. In addition, these amendments strike wording that was inserted in subrule 64.15(2) in error several years ago. The wording was intended by the Commission to be inserted into General Permit No. 2 but was instead inserted into the Iowa Administrative Code.

Several minor changes for clarification are being made in the general permits. Also, substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register (FR), Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009, and implemented in 40 CFR 450.21. Most of the measures in the Federal Register notice are already included in General Permit No. 2. The substantive change being made in General Permit No. 2 involves topsoil preservation at construction sites. The Code of Federal Regulations as amended by the Federal Register notice now requires topsoil preservation “unless unfeasible” at construction sites required to have a permit. Topsoil preservation has not been defined in the federal regulations. For clarity, the Commission has defined “topsoil preservation” as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use practices after construction has been completed. This depth was chosen after consultation with developers and city officials and consultation of the Statewide Urban Design and Specifications manual that stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4-inch topsoil depth requirement is consistent with these specifications and current development practices and will not impede the construction of these types of infrastructure. The Commission believes retention of this depth of topsoil satisfies the federal requirement to preserve topsoil.

The fee structure of the current permits has been retained.

It is not the intent of the Commission that the textual changes in the general permits be adopted in the Iowa Administrative Code but that these changes be made in the general permits themselves, which are adopted by reference into the Iowa Administrative Code.

Copies of the proposed revised General Permit Nos. 1, 2 and 3 are available upon request by writing or calling the Department of Natural Resources at the address or telephone number below.

Any interested party may make written comments on the proposed amendments on or before June 6, 2012. Written comments should be directed to the Storm Water Coordinator, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)281-8895. People who wish to convey their views orally should contact the Storm Water Coordinator at (515)281-7017 or at the Department’s offices on the fifth floor of the Wallace State Office Building.

A public hearing will be held June 6, 2012, at 10 a.m. in the Third Floor Conference Room of the Wallace State Office Building. At the public hearing, persons may present their views either orally or in

writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

After analysis and review of this rule making, no adverse impact on jobs has been found. The Department of Natural Resources included the development and housing industry while narrowly tailoring this rule making to minimize any adverse impact on jobs and maximize any positive impact on jobs. Stakeholders believe there could be a savings for developers and homebuilders in many instances because companies can use existing topsoil on site. A copy of the Jobs Impact Statement is available upon request.

These amendments are intended to implement Iowa Code chapter 455B, division I.

The following amendments are proposed.

ITEM 1. Amend subrule 64.15(1) as follows:

**64.15(1)** Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, ~~2007~~ 2012, to October 1, ~~2012~~ 2017. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

ITEM 2. Amend subrule 64.15(2) as follows:

**64.15(2)** Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, ~~2007~~ 2012, to October 1, ~~2012~~ 2017.

~~a. Part I, provision B, section 1, paragraph A of General Permit No. 2 is amended to read as follows:~~

~~Except for discharges identified under Parts I.B.2. and I.B.3., this permit may authorize the discharge of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area);~~

~~b. Part VIII, under the definition: Storm water discharge associated with industrial activity, paragraph (x) of General Permit No. 2 is amended to read as follows:~~

~~Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which is not part of a larger common plan of development or sale.~~

ITEM 3. Amend subrule 64.15(3) as follows:

**64.15(3)** Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, ~~2007~~ 2012, to October 1, ~~2012~~ 2017. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.